

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition: 45-001-02-1-5-00082
Petitioner: Joseph A. Belovich
Respondent: Department of Local Government Finance
Parcel: 001-25-47-0087-0011
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 25, 2004. The Department of Local Government Finance (the DLGF) determined the tax assessment for the subject property is \$11,500 and notified Petitioner on March 31, 2004.
2. Petitioner filed Form 139L on April 30, 2004.
3. The Board issued a notice of the hearing to the parties dated May 20, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on June 22, 2005.
5. Persons present and sworn as witnesses at the hearing:
Joseph F. and Bernice J. Belovich, owners,
Joseph Lukomski, Jr, assessor/auditor, DLGF.

Facts

6. Subject property is a single-family dwelling located at 3841 Pennsylvania Street in Gary.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
Land \$4,300 Improvements \$7,200 Total \$11,500.
9. The assessed value requested by Petitioner is:
Land \$2,000 Improvements \$3,000 Total \$5,000.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) Petitioners have spent over \$3,567 in labor costs to fix items such as plumbing, floor work, and doors during 2004 and 2005. This work is continuing. *Petitioner Exhibits 1, 2; J. Belovich testimony.*
 - b) Final costs will include materials expected to be twice the labor costs. *B. Belovich testimony.*
 - c) A majority of these expenses stem from termite damage in the basement that required the replacement of the support beams, floor joists, and sub-flooring. *J. Belovich testimony; B. Belovich testimony.*
 - d) Petitioners have been unable to sell subject property due to the extensive termite damage. *J. Belovich testimony.*
 - e) The condition of the dwelling should be poor and not fair. *Id.*
11. Respondent contends the assessment is correct because the assessed value per square foot (\$17.27) falls within the range of three comparable sales found in the subject's neighborhood. That range is from \$10.62 to \$17.37. *Respondent Exhibit 4; Lukomski testimony.*

Record

12. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 1560,
 - c) Exhibits:
 - Petitioner Exhibit 1 - French repair bill of \$150,
 - Petitioner Exhibit 2 - Miscellaneous repair bills,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent Exhibit 4 - Top three comparable sales, top 20 comparable sales, property record cards, and photographs,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Hearing Notice,
 - Board Exhibit C - Hearing Sign-In Sheet,
 - d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
14. Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) The property is currently assessed as being in fair condition.
 - b) Fair condition is described as a dwelling where marked deterioration is evident. "It is rather unattractive and undesirable, but still quite useful." It needs a substantial number of repairs. "Many items need to be refurbished, overhauled, or improved." There is obvious deferred maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
 - c) Poor condition is described as a dwelling with definite, obvious structural deterioration. "It is definitely undesirable or barely usable." It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*
 - d) Petitioner did not submit probative evidence showing the property was barely usable. The evidence established a few repair costs incurred in 2004 and 2005. Petitioner's claims that costs of materials are expected to be twice the cost of labor and that such costs prove a lower condition are merely conclusions. Such conclusory statements that are unsupported by factual evidence are not sufficient to prove an error. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - e) Petitioner also failed to relate these maintenance items and costs to the valuation date, January 1, 1999. Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. If evidence is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1,

1999, is required if those documents are to have probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- f) Where Petitioner fails to support a claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119-1120.

Conclusion

15. Petitioner failed to establish a prima facie case. The Board finds for Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), § 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.